

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

MOV-ology LLC,

Plaintiff,

v.

BigCommerce Holdings, Inc.,
BigCommerce Pty. Ltd., and
BigCommerce, Inc.,

Defendants.

Civil Action No. 6:22-cv-00084-ADA

Jury Trial Demanded

First Amended Complaint For Patent Infringement

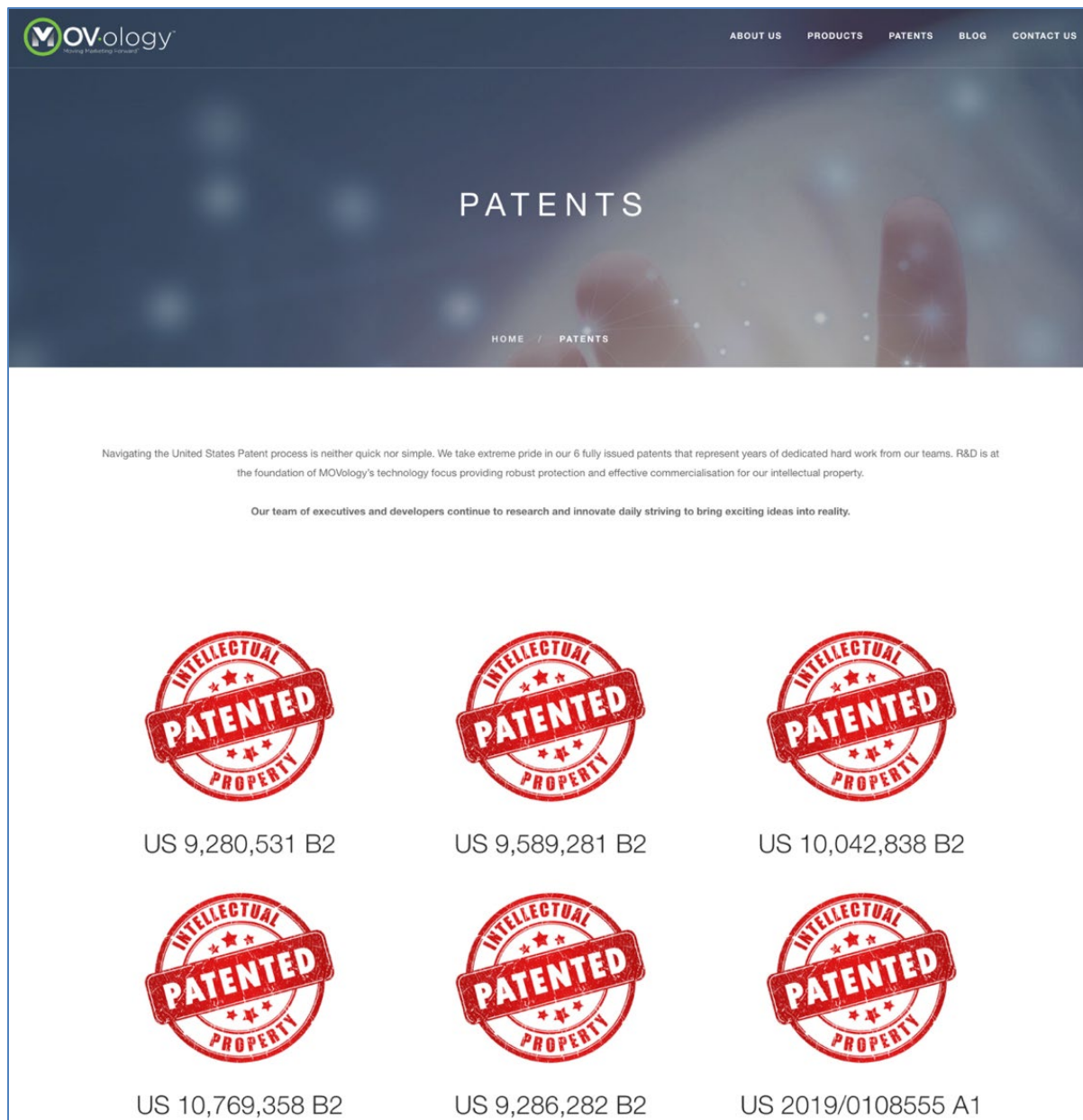
Plaintiff MOV-ology LLC (“MOV-ology”) files this First Amended Complaint for patent infringement against Defendants BigCommerce Holdings, Inc., BigCommerce Pty. Ltd., and BigCommerce, Inc. (collectively, “BigCommerce”), and alleges the following:

Nature of the Action

1. MOV-ology sues to stop, and to recover damages caused by, BigCommerce’s infringement of MOV-ology’s patents.
2. Founded in 2011 as MOV Digital Media, Inc., MOV-ology has spent the last decade developing and commercializing its proprietary Capture® software. Capture® allows businesses to amplify their online lead generation and remarketing capability by capturing data as soon as a customer types it into a web form. Capture® helps businesses stop losing leads to incomplete forms and improve their digital ad spending efficiency. MOV-ology’s Recover® and Automated Postcard ReMarketing services pair with Capture® to help businesses convert leads from incomplete or abandoned web forms into sales. See <https://automatedremarketing.com/>.

3. As recognition of MOV-ology's innovations, the U.S. Patent & Trademark Office has awarded MOV-ology several patents covering systems and methods for capturing, analyzing, and acting on information gathered from incomplete or abandoned web forms. These patents include U.S. Patent Nos. 9,286,282 ("282 patent") and 10,769,358 ("358 patent").

4. Since at least March 2016, MOV-ology's website has identified that its patents, including the '282 and '358 patents, cover its products and services:



<https://movology.com/patents/>.

5. BigCommerce bills itself as “a leading software-as-a-service (SaaS) ecommerce platform that empowers merchants of all sizes to build, innovate and grow their businesses online.” <https://investors.bigcommerce.com>. “Tens of thousands of B2B and B2C companies across 120 countries and numerous industries use BigCommerce to create bountiful, engaging online stores, including Ben & Jerry’s, Skullcandy, Sony and Vodafone.” *Id.* BigCommerce claims that its “Analytics Dashboard” helps customers “[d]rive real-time business impact with critical metrics for orders, customer data, marketing and more” <https://www.bigcommerce.com/product/>.

6. MOV-ology at all relevant times has owned all rights in and title to the ’282 and ’358 patents, including the right to collect past damages for infringement from those that have usurped its patented technology. MOV-ology sues to stop BigCommerce’s known and unauthorized use of its patented technology and to collect damages for those tortious activities.

Parties

7. Plaintiff MOV-ology LLC is a Delaware limited liability company with offices at 1600 North Kramer Boulevard, Anaheim, California 92806.

8. Defendant BigCommerce Holdings, Inc. is a Texas corporation with offices at 11305 Four Points Drive, Floor 1, Austin, Texas 78726. Defendant may be served through its registered agent for service of process, Jeffrey Mengoli, 11305 Four Points Drive, Building 2, Floor 3, Austin, Texas 78726.

9. Defendant BigCommerce Pty. Ltd. is an Australian company with offices at Level 6, 1-3 Small Street Ultimo, NSW 2007 Australia, and may be served in accordance with the Federal Rules of Civil Procedure.

10. Defendant BigCommerce, Inc. is a Texas corporation with offices at 11305 Four Points Drive, Building 2, Floor 3, Austin, Texas 78726. Defendant may be served through its registered agent for service of process, Jeffrey Mengoli, 11305 Four Points Drive, Building 2, Floor 3, Austin, Texas 78726.

11. On information and belief, BigCommerce Holdings, Inc., BigCommerce Pty. Ltd., and BigCommerce, Inc. operate under common ownership and control.

Jurisdiction and Venue

12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action presents a federal question under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, 284, and 285.

13. This Court also has diversity jurisdiction under 28 U.S.C. § 1332(a) because MOV-ology does not share a state of citizenship with any defendant and the amount in controversy exceeds \$75,000.

14. This Court has general personal jurisdiction over BigCommerce because each defendant has engaged in substantial activity within this State and judicial district. The Court has specific jurisdiction over BigCommerce because each defendant has caused acts of infringement to occur in this district in violation of 35 U.S.C. § 271. For example, BigCommerce designs, develops, tests, uses, markets, and sells its infringing products and services at its offices in this District. On information and belief, BigCommerce also operates systems and servers that host websites containing infringing functionality on its platform in this District. Because BigCommerce maintains more than minimum contacts with this State and District, the Court's exercise of jurisdiction here would not offend any notions of fair play and substantial justice.

15. BigCommerce has directly and indirectly committed, and continues to commit, acts of infringement in this State and District at least by making, using, offering to sell, selling, or importing products and services that infringe the asserted patents, including from its offices in this District and using its systems and servers in this District. The Court's exercise of jurisdiction here aligns with constitutional standards of fair play and substantial justice and arises directly from BigCommerce's purposeful minimum contacts in this State and District.

16. Venue is proper in this District as to Defendant BigCommerce Pty. Ltd., a foreign company, because it may be sued in any district under 28 U.S.C. § 1391(c)(3).

17. Venue is proper in this District as to Defendants BigCommerce, Inc. and BigCommerce Holdings, Inc. under 28 U.S.C. § 1400(b) because they have incorporated in Texas and have headquarters and satellite offices in this district. BigCommerce advertises that its “headquarters is set amongst trees and nature trails in the beautiful hills of Austin,” and is “home to the BigCommerce Sales, Support, Operations, G&A Support, Marketing and Design teams.” <https://www.bigcommerce.com/company/>. BigCommerce also operates a second office in downtown Austin “primarily dedicated to Engineering and Product teams working to solve our customers’ most complex problems.” *Id.* In fact, BigCommerce has only one other U.S. location, an outpost in San Francisco “[d]esigned from the get-go to host Tech Talks,” and three international offices in Australia, the United Kingdom, and Ukraine, respectively. *Id.*

The Asserted Patents

18. The ’282 patent, titled “Obtaining Data from Abandoned Electronic Forms,” issued March 28, 2016. MOV-ology co-founders Thomas Ling and Peter Norton filed the application that led to the ’282 patent on June 18, 2014.

19. The ’358 patent, titled “Obtaining Data from Incomplete Electronic Forms,” issued September 8, 2020. Messrs. Ling and Norton filed the application that led to the ’358 patent on July 9, 2018.

20. The ’282 and ’358 patents claim provisional priority to U.S. Provisional Application No. 61/908,349, which Messrs. Ling and Norton filed November 25, 2013.

21. The asserted patents are presumed valid and enforceable under 35 U.S.C. § 282. Exhibits A and B contain copies of the ’282 and ’358 patents, respectively.

22. MOV-ology owns all right, title, and interest in the asserted patents, including the right to assert all causes of action involving the asserted patents and the right to any remedies for infringement, including for past damages. Exhibits C and D contain copies of the assignment records for the ’282 and ’358 patents, respectively.

23. The asserted patents teach technical solutions to an unsolved technological problem. The written descriptions of the asserted patents teach in technical detail each of the limitations of the claims, allowing a person of ordinary skill in the art to understand what the limitations cover and how the combination of claim elements differed markedly from and improved on prior conventional or generic solutions. For example, the asserted patents disclose specific computer technology that allows a website owner to know whether a user has abandoned or otherwise not completed a web form and to capture in real or near-real time the unsubmitted information, which data would be lost without the teachings of the asserted patents.

24. The problem addressed by the asserted patents is unique to computer networking applications such as web pages. The phenomenon of potential customers beginning to fill out an online form only to abandon the form without submitting it is a computer networking-specific problem with no non-computer analogue. For example, the asserted patents allow a website owner to obtain and retain information about a potential customer even if a customer does not complete a transaction at the website. This can only happen if a user first visits a *website* and at least partially completes an *electronic form*. Such a process cannot happen in a physical store.

25. The claimed solutions are technical in nature, as well. The asserted claims of the '282 patent require determining that an HTML form has been abandoned, obtaining data from the abandoned form, building a data structure based on the abandoned form, parsing the data to obtain an HTML element with an attribute, and storing the HTML element, attribute, or user-entered text. Taken together, these computer-implemented operations are specific to HTML web forms and provide a technical means of obtaining data from an abandoned electronic form.

26. The asserted claims of the '358 patent are similar in their recited solution, and further involve obtaining a protocol from a web page and writing a script tag to that web page according to the protocol. Again, these operations are specific to the technical field of online electronic forms and have no non-computer analogue.

27. The asserted patents are thus not directed to an abstract idea.

28. Further, the elements claimed by the asserted patents, taken alone or in combination, were not well-understood, routine, or conventional to one of ordinary skill in the art at the time of the invention. The asserted patents present technical solutions to a problem that only arises in the field of computer technology: how to prevent data loss in web forms that users abandon or otherwise do not complete. The inventions improved on existing techniques for capturing data in web forms, which had required users to complete the form or submit credentials like a username and password to login to a website before that website could capture this form data. The innovative approach of the asserted patents significantly expands the ability to capture data by enabling it without electronic form submission and without a username and password. This approach was not well-understood, routine, or conventional at the time of invention, as website owners relied on form submission or logins to gather data about user activity.

Count I: Infringement of the '282 Patent

29. MOV-ology incorporates the preceding paragraphs as if it repeated them all here.

30. The '282 patent recites 15 claims, including independent claims 1 and 9. *See* Ex. A, 19:12 to 20:45.

31. BigCommerce has infringed and continues to infringe, literally or by the doctrine of equivalents, at least claims 1 and 9 of the '282 patent by making, using, testing, selling, offering for sale, or importing into the U.S. products and services covered by the '282 patent.

32. BigCommerce's products and services that infringe the '282 patent include, for example, its "Conversion Rate Optimization" and "Form Analytics" functionality, as well as applications, software, and services that operate in substantially the same manner on BigCommerce's platform alone or combined with one another. *See, e.g.,* <https://www.bigcommerce.com/ecommerce-answers/what-are-form-analytics/>.

33. Claim 9 of the '282 patent reads:

An apparatus to obtain data from abandoned electronic forms, the apparatus comprising:

computer hardware configured to determine that an electronic form accessed by a user has been abandoned by the user, the electronic form having embedded computer-executable instructions and one or more fields configured to accept user-entered text, the electronic form comprising at least one hypertext markup language (HTML) element associated with the one or more fields, the at least one HTML element having at least one attribute;

computer hardware configured to obtain data from the abandoned electronic form with the embedded computer-executable instructions by building a data structure based on the abandoned electronic form and parse the data structure to obtain the at least one HTML element; and

computer hardware configured to store one or more of the at least one HTML element, the at least one attribute, and the user-entered text.

Ex. A, 20:4-23.

34. On information and belief and as an example, BigCommerce supplies an apparatus to obtain data from abandoned electronic forms. For instance, BigCommerce offers an ecommerce web hosting platform that stores and operates infringing software:

Hosted ecommerce solutions built for speed and security.

The wrong hosting platform can significantly compromise your operations—and your growth. BigCommerce offers multiple layers of security, unlimited bandwidth, and blazing fast speed. Spend more time generating sales and less on monitoring and maintaining your site.

[START YOUR FREE TRIAL](#)

PREMIUM SSL

- ▲ Dynamic Site Seal
- ▲ 1.5m Warranty
- ▲ 99.99% Uptime



<https://www.bigcommerce.com/essentials/features/manage/secure-web-hosting/>. To illustrate more, BigCommerce’s subscription pricing includes unlimited file storage and bandwidth at every tier of service, from small business to enterprise customer:

| | | | | |
|--------------------------------------|-----------|-----------|-----------|-----------|
| Included in all plans | | | | |
| No additional transaction fees ⓘ | 0% | 0% | 0% | 0% |
| Products, file storage and bandwidth | Unlimited | Unlimited | Unlimited | Unlimited |
| Staff accounts | Unlimited | Unlimited | Unlimited | Unlimited |

<https://www.bigcommerce.com/essentials/pricing/>.

35. On information and belief, BigCommerce uses computer hardware configured to determine that an electronic form accessed by a user has been abandoned by the user, the electronic form having embedded computer-executable instructions and one or more fields configured to accept user-entered text, the electronic form comprising at least one hypertext markup language (HTML) element associated with the one or more fields, the at least one HTML element having at least one attribute.

36. On information and belief and as an example, BigCommerce’s computer hardware is configured to determine that an electronic form accessed by a user has been abandoned by a user, as shown in “abandonment reports” and “session recordings” that track a visitor’s progress through a web form, including abandonment. To illustrate:

2. Track which field causes the most abandonment.

High levels of form abandonment, just like overall cart abandonment, can cause massive issues for online businesses. An abandonment report shows you which field the visitor was last completing prior to leaving the page.

Many times, this will highlight a difficult field (information they need to look up or something they're unclear on), something they're not ready to provide (too personal, not sure of their options) or simply form fatigue. With form fatigue, a user reaches a point where the benefit of completing the form is outweighed by the remaining effort.

<https://www.bigcommerce.com/ecommerce-answers/what-are-form-analytics/>.

6. Watch session recordings to see visitors engaging with your forms.

If you've gone through the full list of form analytics and have a hunch or are still unsure of what's happening, check out session recordings to see visitors on your site. Session recordings act like a DVR and show you the entirety of a site visit. See a visitor go from their initial landing page, use your navigation and site search, add items to cart and either abandon or successfully check out.

By pairing session recordings with form analytics, you're able to confidently make decisions with your website's most important conversion points.

Id.

37. On information and belief and as an example, BigCommerce provides an electronic form having embedded computer-executable instructions and one or more fields configured to accept user-entered text, the electronic form comprising at least one hypertext

markup language (HTML) element associated with one or more fields, the at least one HTML element having at least one attribute by providing a form builder that uses HTML code to create fillable forms with configurable attributes. To illustrate:

Contact forms are a convenient way to manage how your customers get in touch with you. It allows you to set up a formatted message so you can control the information they send and reduce spam email contacts. BigCommerce has a built-in contact form, but you can use a more robust [third-party contact form](#) tailored for your business needs.


Built-in Contact Form


The native, built-in contact form includes the following fields:

- Email Address
- Question/Comment
- Full Name
- Company Name
- Phone Number
- Order Number
- RMA Number

<https://support.bigcommerce.com/s/article/Creating-a-Contact-Form>.

5. Under **Show These Fields, check the boxes to the left of each field you want to include in your contact form.**

Show These Fields ☒ Email Address
☒ Question/Comment
☐ Full Name
☐ Company Name
☐ Phone Number
☐ Order Number
☐ RMA Number 

 **What is RMA number?** RMA stands for Return Merchandise Authorization. It's a number sent to a customer to help manage returns. To learn more about processing returns, see [Processing Returns](#).

Id.

38. On information and belief and as another example, BigCommerce's web page content comprises HTML source code. To illustrate:

Is web page content exportable?

No. Web page content is not exportable in BigCommerce. If you plan on moving your website, back up your web pages' content by downloading their HTML source code to your local computer or device, or use a [backup-and-restore](#) app like [Rewind](#) to back up your web pages, products (with descriptions), and categories.

https://support.bigcommerce.com/s/article/Using-the-WYSIWYG-Editor?language=en_US.

39. On information and belief and as another example, BigCommerce's computer hardware is configured to process computer-executable instructions for creating and tracking web forms using HTML created with custom contact form builders. To illustrate:

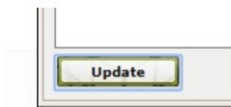
1. Use a [custom form builder](#) of your choice to create your form. When finished, save your work and copy the embed HTML code provided by the third-party form builder. See [Additional Resources](#) below for instructions for some of our suggested custom form builders.

2. Go to **Storefront > Web Pages** and click **Create a Web Page**. For **This Page Will**, select **Contain content created using the WYSIWYG editor below**.

3. Name the page, then click the **Edit HTML Source** button in the far right of the WYSIWYG editor toolbar.



4. Paste the embed code you got from your form provider, then click **Update**.



5. **Save** your changes.

<https://support.bigcommerce.com/s/article/Creating-a-Contact-Form>.

40. On information and belief, BigCommerce's computer hardware is configured to obtain data from the abandoned electronic form with the embedded computer-executable instructions by building a data structure based on the abandoned electronic form and pars[ing] the data structure to obtain the at least one HTML element. For example, BigCommerce's form analytics features and functionality builds and parses a data structure based on the form to obtain information entered into the form and to analyze a visitor's interaction with the form. BigCommerce parses a data structure based on an abandoned electronic form to determine at least in what order visitors complete forms, where visitors decide to abandon forms, and how long visitors spend filling out forms. To illustrate:

1. Use field order to see how visitors complete your forms.

Are your form's fields in a particular order? Did you put what you believe to be the most difficult field last? No matter how you've approached field order, your visitors may prefer a different setup. Field Order, as the name implies, is a report that shows you which order the fields are completed.

With this metric, you'll know if visitors prefer giving you their email address before other pieces of information, or if they follow along with your setup.

2. Track which field causes the most abandonment.

High levels of form abandonment, just like overall cart abandonment, can cause massive issues for online businesses. An abandonment report shows you which field the visitor was last completing prior to leaving the page.

Many times, this will highlight a difficult field (information they need to look up or something they're unclear on), something they're not ready to provide (too personal, not sure of their options) or simply form fatigue. With form fatigue, a user reaches a point where the benefit of completing the form is outweighed by the remaining effort.

3. See how long it takes visitors to finish your forms.

No matter how exciting your product or service is, the process of filling out a form is not something the average visitor loves doing. A form submission time report shows two things. First, it will show you how long visitors are on your page prior to starting the form. Second, it will show how long the average visitor takes to complete each field.

<https://www.bigcommerce.com/ecommerce-answers/what-are-form-analytics/>.

41. On information and belief, BigCommerce supplies computer hardware configured to store one or more of the at least one HTML element, the at least one attribute, and the user-entered text. For example, BigCommerce's form analytics functionality involves storing at least one HTML element or at least one attribute of an abandoned form to analyze and calculate reports, such as a form submission time report, abandonment report, or field order report:

1. Use field order to see how visitors complete your forms.

Are your form's fields in a particular order? Did you put what you believe to be the most difficult field last? No matter how you've approached field order, your visitors may prefer a different setup. Field Order, as the name implies, is a report that shows you which order the fields are completed.

With this metric, you'll know if visitors prefer giving you their email address before other pieces of information, or if they follow along with your setup.

2. Track which field causes the most abandonment.

High levels of form abandonment, just like overall cart abandonment, can cause massive issues for online businesses. An abandonment report shows you which field the visitor was last completing prior to leaving the page.

Many times, this will highlight a difficult field (information they need to look up or something they're unclear on), something they're not ready to provide (too personal, not sure of their options) or simply form fatigue. With form fatigue, a user reaches a point where the benefit of completing the form is outweighed by the remaining effort.

3. See how long it takes visitors to finish your forms.

No matter how exciting your product or service is, the process of filling out a form is not something the average visitor loves doing. A form submission time report shows two things. First, it will show you how long visitors are on your page prior to starting the form. Second, it will show how long the average visitor takes to complete each field.

Id.

42. Additional examples of how BigCommerce infringes the '282 patent appear at Exhibit E.

43. BigCommerce has known about the '282 patent since at least its receipt of MOV-ology's letter of January 18, 2022, which notified BigCommerce that at least its "Conversion Rate Optimization" and "Form Analytics" features and functionality infringed at least claims 1 and 9 of the '282 patent, and in no event later than the date of service of this Complaint.

44. At least as early as BigCommerce's knowledge of the '282 patent, BigCommerce indirectly infringes the '282 patent in the United States by inducement under 35 U.S.C. § 271(c). BigCommerce knowingly and intentionally induces infringement of the '282 patent by intending others to make, use, offer for sale, or sell in the United States products or services covered by the '282 patent. BigCommerce provides these products or services and provides instructions on their use to others, such as platform partners, app developers, customers, and end customers, who provision for use, offer for sale, or sell in the United States products or services that directly infringe at least claims 1 and 9 of the '282 patent. BigCommerce also forms a joint enterprise with its platform partners and app developers, who it contractually or otherwise controls, who offer products and services on BigCommerce's platform that infringe the '282 patent.

45. BigCommerce also contributes to infringement of the '282 patent by others by knowingly providing products and services that, when configured and combined with software supplied by platform partners and app developers, result in a system that directly infringes at least claim 1 of the '282 patent. Again, BigCommerce is the active mover in connection with these activities.

46. BigCommerce is liable for infringement of the '282 patent due to its actions in this District and throughout the United States. BigCommerce's infringing conduct has caused MOV-ology to suffer damages and irreparable harm.

Count II: Infringement of the '358 Patent

47. MOV-ology incorporates the preceding paragraphs as if it repeated them all here.

48. The '358 patent recites 20 claims, including independent claims 1, 9, and 17. *See* Ex. B, 19:19 to 22:21.

49. BigCommerce has infringed and continues to infringe, literally or by the doctrine of equivalents, at least claims 1, 9, and 17 of the '358 patent by making, using, testing, selling, offering for sale, or importing into the U.S. products and services covered by the '358 patent.

50. BigCommerce's products and services that infringe the '358 patent include, for example, its "Conversion Rate Optimization" and "Form Analytics" functionality, its marketing and retargeting features and functionality that includes features added by approved apps and integrations, as well as applications, software, and services that operate in substantially the same manner on BigCommerce's platform. *See, e.g.,* <https://www.bigcommerce.com/ecommerce-answers/what-are-form-analytics/>; *see also* <https://www.bigcommerce.com/apps>.

51. Claim 17 of the '358 patent reads:

A method to obtain data from incomplete electronic forms, the method comprising:

assessing an incomplete electronic form comprising at least one hypertext markup

language (HTML) element and user-entered text entered by a user;

obtaining a protocol of at least one webpage associated with the incomplete electronic form;

writing a script tag associated with a script file to the at least one webpage according to the protocol, the script tag configured to place the script file onto the at least one webpage, the script file configured to locate the at least one HTML element;

building a data structure based on the incomplete electronic form that comprises at least the user-entered text;

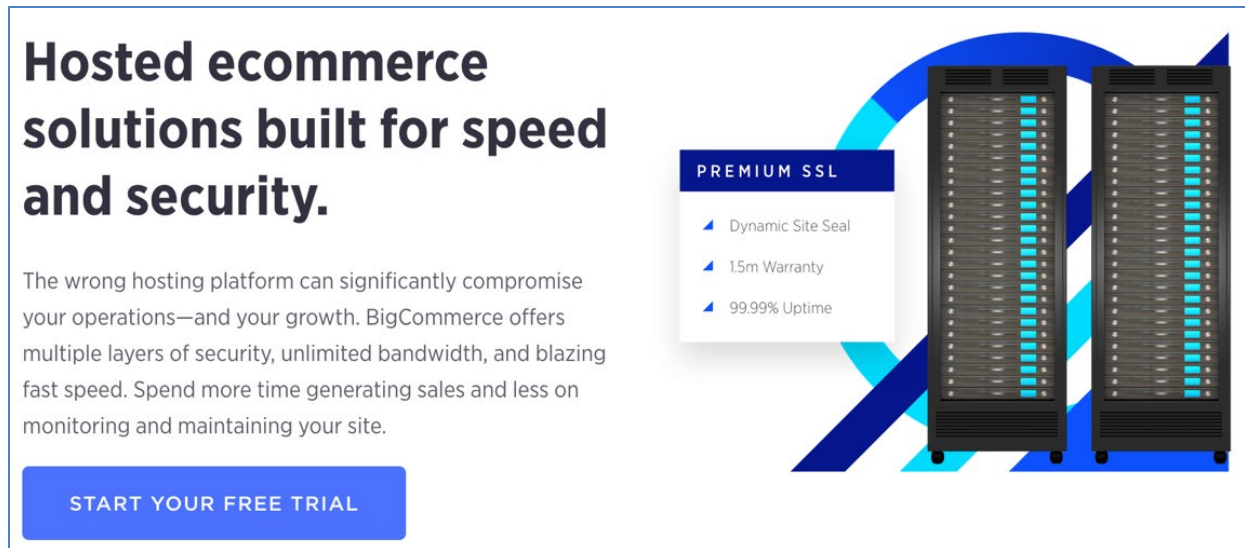
communicating with one or more databases to obtain additional information about the user based at least in part on the user-entered text obtained from the incomplete electronic form;

storing contact profile information that comprises at least a portion of the user-entered text obtained from the incomplete electronic form and at least a portion of the additional information about the user obtained from the one or more databases; and

sending to the user, a personalized message based at least in part on the at least one HTML element and the contact profile information.

Ex. B, 21:8 to 22:12.

52. On information and belief and as an example, BigCommerce supplies a method to obtain data from incomplete electronic forms. For instance, BigCommerce offers an ecommerce web hosting platform that stores and operates infringing software:



Hosted ecommerce solutions built for speed and security.

The wrong hosting platform can significantly compromise your operations—and your growth. BigCommerce offers multiple layers of security, unlimited bandwidth, and blazing fast speed. Spend more time generating sales and less on monitoring and maintaining your site.

START YOUR FREE TRIAL

PREMIUM SSL

- Dynamic Site Seal
- 1.5m Warranty
- 99.99% Uptime

The advertisement features a blue and white color scheme with a large blue 'Z' shape in the background. On the right, there are two server racks with glowing blue lights. A white box with a blue border lists the 'PREMIUM SSL' features.

<https://www.bigcommerce.com/essentials/features/manage/secure-web-hosting/>. To illustrate more, BigCommerce’s subscription pricing includes unlimited file storage and bandwidth at every tier of service, from small business to enterprise customer:

| Included in all plans | | | | |
|--------------------------------------|-----------|-----------|-----------|-----------|
| No additional transaction fees ① | 0% | 0% | 0% | 0% |
| Products, file storage and bandwidth | Unlimited | Unlimited | Unlimited | Unlimited |
| Staff accounts | Unlimited | Unlimited | Unlimited | Unlimited |

<https://www.bigcommerce.com/essentials/pricing/>.

53. On information and belief and as an example, BigCommerce supplies or hosts software that assesses an incomplete electronic form comprising at least one hypertext markup language (HTML) element and user-entered text entered by a user. BigCommerce’s data analytics include “abandonment reports” and “session recordings” that track visitors’ progress

through a web form and identify incompletions. BigCommerce webpages contain HTML content supplied by BigCommerce or its integrated application partners that monitors a user's activity on a webpage and monitors events, including clicks and idle time. BigCommerce's integrated application partners also supply functionality that places listeners on webpages and retrieves data about a user's visit every time the user moves a cursor or clicks on a page element. To illustrate:

2. Track which field causes the most abandonment.

High levels of form abandonment, just like overall cart abandonment, can cause massive issues for online businesses. An abandonment report shows you which field the visitor was last completing prior to leaving the page.

Many times, this will highlight a difficult field (information they need to look up or something they're unclear on), something they're not ready to provide (too personal, not sure of their options) or simply form fatigue. With form fatigue, a user reaches a point where the benefit of completing the form is outweighed by the remaining effort.

<https://www.bigcommerce.com/ecommerce-answers/what-are-form-analytics/>.

6. Watch session recordings to see visitors engaging with your forms.

If you've gone through the full list of form analytics and have a hunch or are still unsure of what's happening, check out session recordings to see visitors on your site. Session recordings act like a DVR and show you the entirety of a site visit. See a visitor go from their initial landing page, use your navigation and site search, add items to cart and either abandon or successfully check out.

By pairing session recordings with form analytics, you're able to confidently make decisions with your website's most important conversion points.

Id.

54. On information and belief and as an example, BigCommerce provides an electronic form comprising at least one hypertext markup language (HTML) element and user-entered text entered by a user. BigCommerce's "WYWISYG" website editor built into its platform displays and allows for the modification of HTML elements and the creation of forms to capture user-entered text entered by a user. To illustrate:

Contact forms are a convenient way to manage how your customers get in touch with you. It allows you to set up a formatted message so you can control the information they send and reduce spam email contacts. BigCommerce has a built-in contact form, but you can use a more robust [third-party contact form](#) tailored for your business needs.


Built-in Contact Form

The native, built-in contact form includes the following fields:

- Email Address
- Question/Comment
- Full Name
- Company Name
- Phone Number
- Order Number
- RMA Number

<https://support.bigcommerce.com/s/article/Creating-a-Contact-Form>.

5. Under **Show These Fields, check the boxes to the left of each field you want to include in your contact form.**

| | | |
|-------------------|-------------------------------------|--|
| Show These Fields | <input checked="" type="checkbox"/> | Email Address |
| | <input checked="" type="checkbox"/> | Question/Comment |
| | <input type="checkbox"/> | Full Name |
| | <input type="checkbox"/> | Company Name |
| | <input type="checkbox"/> | Phone Number |
| | <input type="checkbox"/> | Order Number |
| | <input type="checkbox"/> | RMA Number  |



What is RMA number? RMA stands for Return Merchandise Authorization. It's a number sent to a customer to help manage returns. To learn more about processing returns, see [Processing Returns](#).

Id.

55. On information and belief and as another example, BigCommerce's web page content comprises HTML source code. To illustrate:

Is web page content exportable?

No. Web page content is not exportable in BigCommerce. If you plan on moving your website, back up your web pages' content by downloading their HTML source code to your local computer or device, or use a [backup-and-restore](#) app like [Rewind](#) to back up your web pages, products (with descriptions), and categories.

https://support.bigcommerce.com/s/article/Using-the-WYSIWYG-Editor?language=en_US.

56. On information and belief and as another example, BigCommerce's software also stores and processes electronic forms comprising at least one HTML element and user-entered text entered by a user using "suggested third-party custom contact form builders." To illustrate:

1. Use a [custom form builder](#) of your choice to create your form. When finished, save your work and copy the embed HTML code provided by the third-party form builder. See [Additional Resources](#) below for instructions for some of our suggested custom form builders.

2. Go to **Storefront > Web Pages** and click **Create a Web Page**. For **This Page Will**, select **Contain content created using the WYSIWYG editor below**.

This Page Will ☒ Contain content created using the WYSIWYG editor below

☐ Link to another website or document

☐ Display syndicated content from an RSS feed

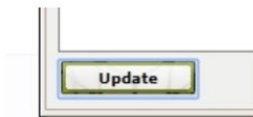
☐ Allow people to send questions/comments via a contact form

☐ Contain raw HTML entered in the text area below ?

3. Name the page, then click the **Edit HTML Source** button in the far right of the WYSIWYG editor toolbar.



4. Paste the embed code you got from your form provider, then click **Update**.



5. **Save** your changes.

Id.

57. On information and belief and as an example, BigCommerce uses, supplies, or hosts software that obtains a protocol of at least one webpage associated with the electronic form. BigCommerce webpages contain HTML content and scripts supplied or created by BigCommerce or its integrated application partners that identify the protocol of a webpage—for example, HTTP/HTTPS—associated with the form present on that page. For instance, BigCommerce’s “Analytics.min.js” script supporting its form analytics functionality performs a check to return the protocol of a webpage.

58. On information and belief, BigCommerce uses, supplies, or hosts software that writes a script tag associated with a script file to the at least one webpage according to the protocol, the script tag configured to place the script file onto the at least one webpage, the script file configured to locate the at least one HTML element. For instance, BigCommerce webpages contain “bcanalytics” functions such as “trackForm,” “trackClick,” and “trackSubmit” that correspond to commands such as “createElement(‘script’)” that involve the writing of script tags to place script files onto these webpages, which locate at least one HTML element on the page.

59. On information and belief and as an example, BigCommerce uses, supplies, or hosts software that builds a data structure based on the incomplete electronic form that comprises at least the user-entered text. BigCommerce hosts software that builds a data structure based on the incomplete electronic form to store user-entered text retrieved from an incomplete electronic form. BigCommerce’s integrated application partners also supply software that identifies each element of a form and records a user’s progress through the form on one or more webpages. Other BigCommerce integrated application partners create query strings that follow a user’s progress through a form by amending information about the user’s visit to a customized URL.

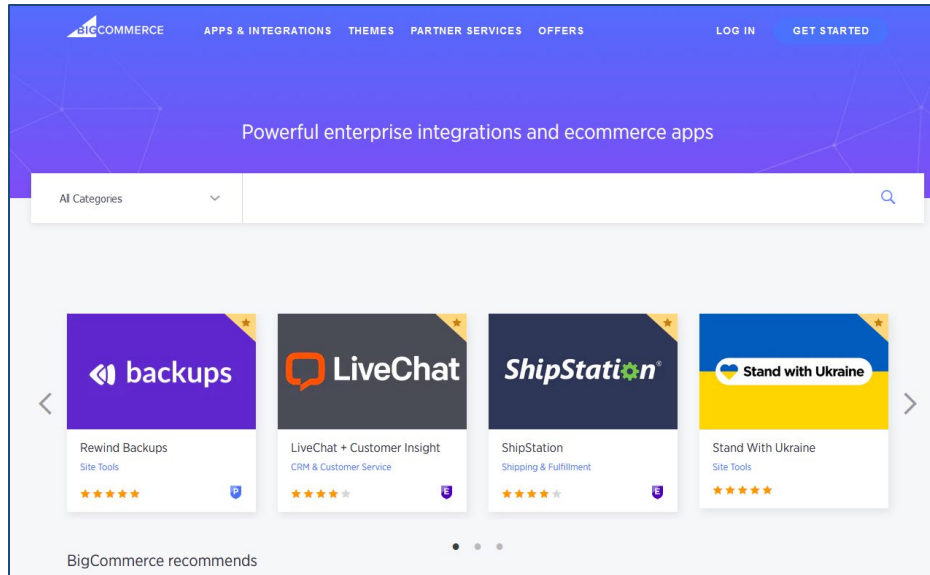
60. On information and belief and as an example, BigCommerce supplies or hosts software that communicates with one or more databases to obtain additional information about the user based at least in part on the user-entered text obtained from the incomplete electronic form. To illustrate, BigCommerce webpages contain HTML content supplied by BigCommerce or its integrated application partners that transmits data collected from or about a user’s webpage

visit and transmits it through an API to one or more other marketing contact databases, including databases operated by third parties. This data includes user-entered text in a form, such as contact information, or data about a user's browsing session.

61. On information and belief, BigCommerce uses, supplies, or hosts software that stores contact profile information that comprises at least a portion of the user-entered text obtained from the incomplete electronic form and at least a portion of the additional information about the user obtained from the one or more databases. For example, BigCommerce and its integrated application partners supply digital marketing functionality that manages contact information about customers and their interests. This data includes information shared by a user, user-entered text in incomplete or abandoned web forms, and data supplied by databases queried after an incomplete or abandoned form event to obtain additional information about a site visitor.

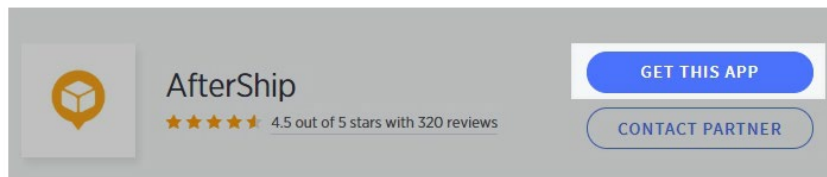
62. On information and belief, BigCommerce sends to a user, a personalized message based at least in part on the at least one HTML element and the contact profile information. As an example, BigCommerce's integrated application partners offer software that manages or automates efforts to market, remarket, or retarget visitors who did not make or complete a purchase of goods and services during a webpage visit. These partners offer software that retrieves information from a contact profile and sends personalized messages based at least in part on the webpage with which a user interacted and the user's contact information.

63. On information and belief, BigCommerce directly infringes the '358 patent in the United States by hosting on its servers located in the United States and executing in response to customer or user commands both its software and the software of its third party integrated application partners advertised and made available on BigCommerce's integrated application marketplace. To illustrate:

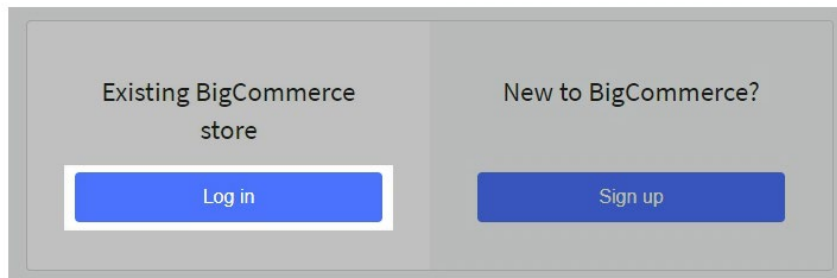


<https://www.bigcommerce.com/apps/>.

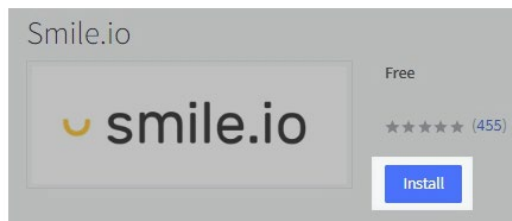
When you find an app you are interested in installing, click on the app banner and then the **Get This App** button. You can also take a moment to read about the app, check out some screenshots and videos, or read some reviews.



You'll be taken to the login screen where you will select the store that will install the app.



After logging in, you'll be taken to the app install page. Click **Install**.



https://support.bigcommerce.com/s/article/How-do-I-access-and-install-the-new-single-click-apps-within-my-Bigcommerce-store-control-panel?language=en_US. To illustrate more,

BigCommerce advertises and makes available for integration into the software hosted on its platform applications called Digioh, ProveSource, and others that offer infringing functionality:

Home / Digioh

Digioh
No reviews yet

[CONTACT PARTNER](#) [GET THIS APP](#)

About the app

The Digioh app helps BigCommerce sites capture up to 7x more emails and recover up to 15% of abandoned carts. Drag and drop to create personalized forms, quizzes/surveys, and landing pages that integrate with your favorite email marketing, CRM, and analytics systems.

Digioh marries ease of use with unlimited flexibility, giving marketers the best of both worlds: an intuitive self-serve platform coupled with the support of our dev-on-demand team for your most advanced use cases. With a built-in Custom JS editor, Digioh can be configured to meet your exact needs.

Our eCommerce conversion suite includes back-in-stock notifications, one-time-use (dynamic) coupons, tiered discounts/free shipping thresholds, and personalized up-sell/cross-sell recommendations.

Pricing

Upfront Fee: Free
Recurring Fee: None

Information

Last updated: July, 20 2022

This app may not be fully compatible with multi-storefront. Please get in touch with the [technical partner](#) for further details.

Documentation:
[Installation guide](#)
[User guide](#)

[GET SUPPORT](#)

<https://www.bigcommerce.com/apps/digioh/>.

Home / ProveSource Social Proof

ProveSource Social Proof
★★★★★ 3 out of 5 stars with 2 reviews

[CONTACT PARTNER](#) [GET THIS APP](#)

About the app

ProveSource is a social proof app that shows live sales popup notifications to get more sales, get higher conversions with less work!

What's Social Proof?

Sales popups, reviews and notifications make your store authentic, it shows that you have buyers that trust you and it makes your store busy and attractive.

It lets consumers see in real-time what others purchased and creates FOMO and urgency.

If you're not yet a big brand, some visitors might hesitate to buy from you and lead to cart abandonment - sales notifications builds trust with your visitors by showing them real sales popups.

Why Social Proof & fomo?

- Increase conversions by showing off recent orders, social proof and sales pop-up notifications
- Instant social proof that builds trust, credibility and confidence with your visitors - let

Pricing

Upfront Fee: Free
Recurring Fee: None

Information

Last updated: July, 20 2022

This app may not be fully compatible with multi-storefront. Please get in touch with the [technical partner](#) for further details.

Documentation:
[User guide](#)

[GET SUPPORT](#)

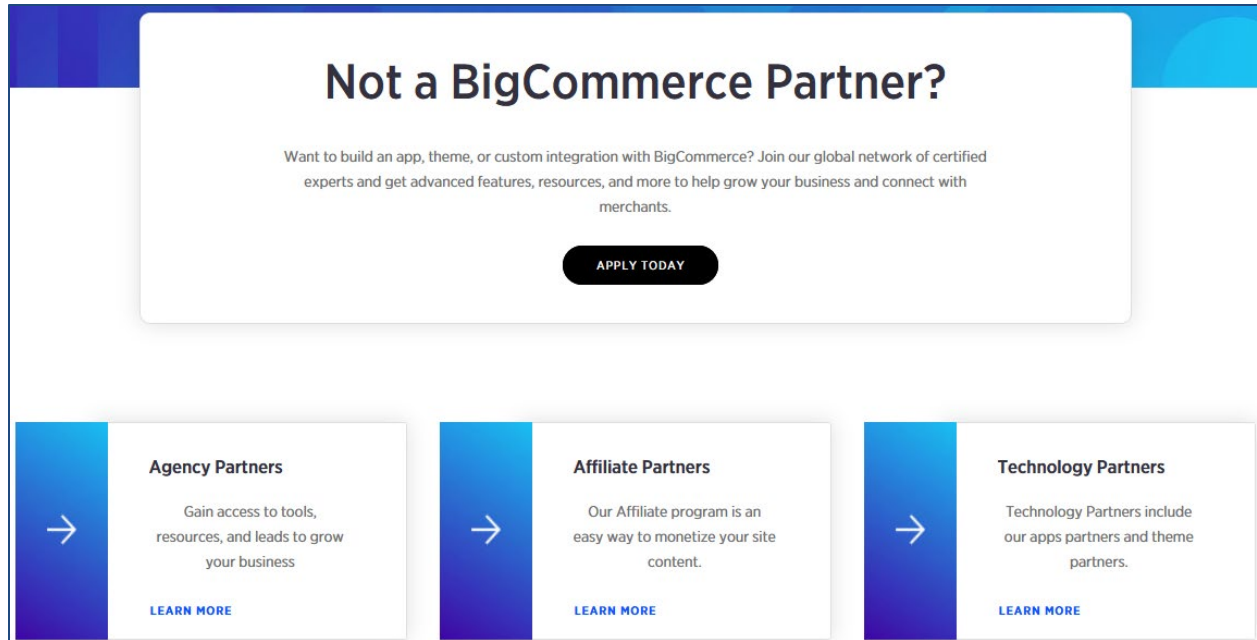
<https://www.bigcommerce.com/apps/provesource-social-proof/>.

64. Additional examples of how BigCommerce directly and indirectly infringes the '358 patent appear at Exhibit F.

65. BigCommerce has known about the '358 patent since at least its receipt of MOVology's letter of January 18, 2022, which notified BigCommerce that at least its "Conversion Rate Optimization" and "Form Analytics" features and functionality, as well as its marketing and retargeting features and functionality, infringed at least claims 1, 9, and 17 of the '358 patent, and in no event later than the date of service of this Complaint.

66. At least as early as BigCommerce's knowledge of the '358 patent, BigCommerce indirectly infringes the '358 patent in the United States by inducement under 35 U.S.C. § 271(c). BigCommerce knowingly and intentionally induces infringement of the '358 patent by intending others to make, use, offer for sale, or sell in the United States products or services covered by the '358 patent. BigCommerce provides these products or services and provides instructions on their use to others, such as platform partners, app developers, customers, and end customers, who provision for use, offer for sale, or sell in the United States products or services that directly infringe at least claim 17 of the '358 patent.

67. BigCommerce also forms a joint enterprise, which it controls, with its platform partners and app developers—such as, for example, Digioh and ProveSource—who offer products and services on BigCommerce's platform that infringe the '358 patent. On information and belief, app developers wishing to integrate their software with BigCommerce's platform must apply to join one of BigCommerce's partner programs, which includes "Agency Partners," "Affiliate Partners," and "Technology Partners." Those applying to join—and those accepted into—BigCommerce's partner programs form an express or implied agreement with BigCommerce regarding their software application available in BigCommerce's app marketplace or their other activities involving BigCommerce's platform, including terms of use and conditions for termination of the partner relationship. To illustrate:



<https://partners.bigcommerce.com/English/>.

68. On information and belief, BigCommerce and its integrated application partners combine their software in pursuit of a common purpose—to offer a single enhanced experience to customers and end users, including implementation of infringing functionality. As an example, BigCommerce makes apps and integrations available to its customers on its app marketplace and allows customers to install these applications such that this application code integrates with BigCommerce’s platform code on BigCommerce’s servers in the United States. To illustrate:

Apps are integrations that can be used to extend the core functionality of BigCommerce. They can give you extra analytics, integrate with other platforms, help you run marketing, and a host of other features. The App Marketplace allows you to easily search for apps and install them with a single click. Each listing provides you with features so you can determine if an app is right for your store. Although some apps may require a subscription to use, many will offer a free trial period or they may be entirely free.

https://support.bigcommerce.com/s/article/How-do-I-access-and-install-the-new-single-click-apps-within-my-Bigcommerce-store-control-panel?language=en_US.

69. On information and belief, BigCommerce and its integrated application partners share a community of pecuniary interest in the common purpose of offering a unified, enhanced experience to BigCommerce’s ecommerce customers and end users. As an example, both BigCommerce and its integrated application partners engage in commercial activities for which

they receive remuneration through subscription revenue, commission revenue, or other means.

On information and belief and as another example, BigCommerce provides its Technology Partners goods and services of value once accepting their application to join the platform. On information and belief, these valuable goods and services include training, support from dedicated account managers, and marketing that includes cross-marketing of BigCommerce's platform with the added features of the integrated application partner's software. *See, e.g.,* <https://www.bigcommerce.com/partners/become-a-partner/>. On information and belief and as yet another example, BigCommerce pays commissions to certain types of partners—including those that supply applications and integrations—that also refer new business to BigCommerce:

Why partner with BigCommerce?

Promotion made easy

Promote BigCommerce anywhere via our referral link, or use our pre-made banners, emails and more. Save time and money on content creation by linking to blogs, webinars and more with content developed by BigCommerce for your audience.

Industry-leading commissions

Receive a 200% bounty per referral and \$1,500 per Enterprise referral, with no commission caps, obligations or minimum commitments. Plus, the more referrals you drive through the program, the higher your commission tier can go.

<https://www.bigcommerce.com/partners/become-a-partner/affiliate/>.

70. On information and belief, BigCommerce and its integrated application partners have an equal right to a voice in the direction of the joint enterprise. As an example, BigCommerce and its integrated application partners, respectively, maintain dominion and control over the technical operation of their respective software contributions to the BigCommerce platform and individual customer websites that have integrated applications supplying infringing functionality. To illustrate, BigCommerce defers technical questions about app functionality to the developers in part because it does not step into the app developers' shoes to assume responsibility for the apps' technical and billing issues:



Having trouble with an app? The best way to resolve the issue is to go to the original app developer and contact them. The app developer is responsible for technical and billing support for their product. Our support team cannot access apps installed on your store to troubleshoot issues effectively.

https://support.bigcommerce.com/s/article/How-do-I-access-and-install-the-new-single-click-apps-within-my-Bigcommerce-store-control-panel?language=en_US#installing. To illustrate

further and as another example, third party ecommerce market participants report that BigCommerce deputizes its Technology Partners to work directly with BigCommerce's customers to "design websites, develop, solve problems, and improve your customer experience while using BigCommerce." <https://avada.io/bigcommerce/docs/become-partners.html>. On information and belief and as another example, BigCommerce and its integrated application partners each retain autonomy over whether to continue to pursue their joint enterprise because either could unilaterally withdraw from the partnership. On information and belief and as another example, BigCommerce markets its platform based in part on the availability and functionality of apps and integrations supplied by its partners, creating a symbiotic relationship where BigCommerce and its partners contribute to the platform's success.

71. BigCommerce also contributes to infringement of the '358 patent by others by knowingly providing products and services that, when configured and combined with software supplied by platform partners and app developers, result in a system that directly infringes at

least claim 17 of the '358 patent. Again, BigCommerce is the active mover in connection with these activities.

72. BigCommerce is liable for infringement of the '358 patent due to its actions in this District and throughout the United States. BigCommerce's infringing conduct has caused MOV-ology to suffer damages and irreparable harm.

Prayer for Relief

MOV-ology asks the Court to enter judgment as follows:

- A. Declaring that BigCommerce has infringed the '282 and '358 patents;
- B. Awarding damages in an amount to be proven at trial, but in no event less than a reasonable royalty for BigCommerce's infringement and prejudgment and post-judgment interest at the maximum permissible rate;
- C. Awarding reasonable attorneys' fees against BigCommerce to MOV-ology as allowed under 35 U.S.C. § 285;
- D. Awarding expenses, costs, and disbursements against BigCommerce, including prejudgment interest;
- E. Permanently enjoining BigCommerce, its officers, agents, servants, employees, attorneys, and all others acting in concert or participation with BigCommerce from infringing the asserted patents; and
- F. Awarding any other relief the Court deems just and proper.

Demand for Jury Trial

MOV-ology demands a trial by jury for all triable claims under FED. R. CIV. P. 38.

Dated: October 14, 2022

Respectfully submitted,

By: Patrick A. Fitch

Karl Rupp

State Bar No. 24035243

krupp@soreylaw.com

Sorey & Hoover LLP

100 North Sixth Street, Suite 502

Waco, Texas 76701

Telephone: 903-230-5600

Robert R. Brunelli (admitted *pro hac vice*)

rbrunelli@sheridanross.com

Matthew C. Holohan (admitted *pro hac vice*)

mholohan@sheridanross.com

Patrick A. Fitch (admitted *pro hac vice*)

pfitch@sheridanross.com

Alex W. Ruge (admitted *pro hac vice*)

aruge@sheridanross.com

Sheridan Ross P.C.

1560 Broadway, Suite 1200

Denver, Colorado 80202

Telephone: 303-863-9700

Facsimile: 303-863-0223

litigation@sheridanross.com

Attorneys for MOV-ology LLC

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record in the above-referenced matter.

/s/ Thomas J. Armento

Thomas J. Armento

Paralegal

tarmento@sheridanross.com

Sheridan Ross P.C.

1560 Broadway, Suite 1200

Denver, Colorado 80202

Telephone: 303-863-9700

Facsimile: 303-863-0223

litigation@sheridanross.com